



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 5, 1995

Ms. T. B. Calabrese  
Assistant City Attorney  
City of Houston  
Legal Department  
P.O. Box 1562  
Houston, Texas 77251-1562

OR95-1355

Dear Ms. Calabrese:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 36506.

The City of Houston (the "city") has received a request for the "five top responses to RFP No. TC-6-6810-025-9781 for Liquid Polymer Flocculent in the Dept. of Public Works & Engineering" and "copies of all 10 of the evaluation matrices used by the Evaluation Committee in determining the best candidate for recommendation to City Council for award of this contract." The city has released the evaluation matrices to the requestor and raises no exceptions of its own to the release of the remaining requested information. However, the city claims that the responsive proposals may contain proprietary information that may be excepted from required public disclosure under section 552.110 of the Government Code and has elected to allow the companies whose proprietary interests may be implicated by this request to submit their own arguments to this office.<sup>1</sup>

Pursuant to section 552.305, we also notified the parties whose proprietary interests may be implicated by this request. *See* Gov't Code § 552.305; Open Records Decision No. 542 (1990). Two of these companies, Allied Colloids, Inc. ("Allied") and Cytec Industries, Inc. ("Cytec"), have responded to our notification by asserting that certain information in their respective proposals is excepted from required public

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<sup>1</sup>The city has submitted for our inspection copies of the requested proposals made by Allied Colloids, Inc., Cytec Industries, Inc., Polypure, Inc., Citi-Chem, Inc., and Stockhausen, Inc.

disclosure under the Open Records Act. Since the other three companies have not responded to our notification, we assume that they do not have a privacy or property interest in the requested information. Thus, the city must release the information that concerns Polypure, Inc., Citi-Chem, Inc., and Stockhausen, Inc.

Section 552.110 excepts from disclosure trade secrets and commercial or financial information obtained from a person and confidential by statute or judicial decision. Section 552.110 is divided into two parts: (1) trade secrets and (2) commercial or financial information, and each part must be considered separately.

The Texas Supreme Court has adopted the definition of "trade secret" from the Restatement of Torts, section 757, which holds a "trade secret" to be:

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to a single or ephemeral event in the conduct of the business . . . . A trade secret is a process or device for continuous use in the operation of the business. . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939); see *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958). When a governmental body takes no position with regard to the application of the "trade secrets" branch of section 552.110 to requested information, we accept a private person's claim for exception as valid under that branch if that person establishes a prima facie case for exception and no one submits an argument that rebuts the claim as a matter of law. Open Records Decision No. 552 (1990) at 5.<sup>2</sup>

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<sup>2</sup>The six factors that the Restatement gives as indicia of whether information constitutes a trade secret are: "(1) the extent to which the information is known outside of [the company]; (2) the extent to which it is known by employees and others involved in [the company's] business; (3) the extent of measures taken by [the company] to guard the secrecy of the information; (4) the value of the information to [the company] and [its] competitors; (5) the amount of effort or money expended by [the company] in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others." RESTATEMENT OF TORTS, *supra*; see also Open Records Decision Nos. 319 (1982) at 2, 306 (1982) at 2, 255 (1980) at 2.

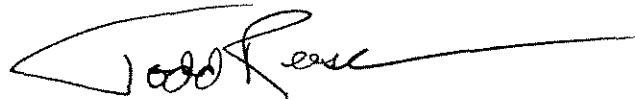
We have considered Allied's assertion that its customer lists are "trade secrets" and conclude that Allied has failed to establish a prima facie case that this information is a trade secret. In addition, Allied has not claimed that this information is either commercial or financial information and, therefore, we need not address the second part of section 552.110. We conclude that Allied's customer lists are not excepted under section 552.110 and the city must release the proposal submitted by Allied in its entirety.

Cytec asserts that their price adjustment (discount) for each product category and the price lists for their products are both "trade secrets" and "commercial information" under section 552.110. However, we believe that Cytec has failed to establish a prima facie case for exception as a "trade secret" with regard to either the city's price adjustment or Cytec's price lists. Therefore, this information may not be withheld as a "trade secret" under section 552.110.

Section 552.110 also protects "commercial information" if it is information made confidential by a statute or judicial decision. *See* Open Records Decision No. 592 (1991) at 6. Because Cytec has not demonstrated that a statute or judicial decision excepts this information from disclosure, we conclude that this information may not be excepted as "commercial information" under section 552.110. Because Cytec has not established that the city's price adjustment or Cytec's price lists are either "trade secrets" or "commercial information," the city must release the proposal submitted by Cytec in its entirety.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Todd Reese  
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Open Records Division

RTR/KPB/rho

Ref.: ID# 36506

Enclosures: Submitted documents

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